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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,431	01/25/2002	Peter Paasch Mortensen	10127.200-US	9691

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NOVOZYMES NORTH AMERICA, INC.
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NEW YORK, NY 10110

EXAMINER

DEJONG, ERIC S

ART UNIT	PAPER NUMBER
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1631

NOTIFICATION DATE	DELIVERY MODE
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06/11/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Patents-US-NY@novozymes.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/057,431	Applicant(s) MORTENSEN, PETER PAASCH	
	Examiner ERIC S. DEJONG	Art Unit 1631	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 05/11/2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-12, 14-20, 44, 47-49 and 52-56.
- Claim(s) withdrawn from consideration: 28, 50 and 51.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 01/23/2009
13. ☐ Other: _____.

/ERIC S. DEJONG/
Examiner, Art Unit 1631

Continuation of Item 11. NOTE:

All rejections are maintained from the Final Office action, mailed 12/11/2008.

Claims 1-12, 14-20, 44, 47-49, and 52-56 are rejected under 35 USC 103(a) as being unpatentable over Chandler et al. (US Patent No. 6,268,222).

Applicants arguments filed 05/11/2009 have been fully considered but they are not persuasive.

In regard to the rejection of claims under 35 USC 103(a), applicants argue that they have created a novel process for analyzing granular compositions to determine one or more quality parameters and that the novel process solves problems for granular formation and reduces risk associated with active dust. Applicants further argue that Chandler et al. does not related to enzyme granules and instead relates to flourescent article including a core or carrier particle. Applicants further argue that Chandler teaches away from a light ansorbing layer of the present disclosure, and one of skill in the art would not substitute the polymeric shells of Chandler for the layers of the present disclosure.

In response, it is first noted that the instant claims are not directed to a composition, i.e. an enzyme granule, but rather a method of fluorescence analysis of enzyme granules. Further, the basis of the instant rejection acknowledges the difference between the instant claims and the prior art encompasses the specified layered structure of particles. However, it is maintained that the recited fluoresece analysis steps of said particle encompasses only that which is old in the art, as taught by Chandler et al. Therefore, since the claims are directed toward a process and not a product, it is maintained that the instant claims are obvious over Chandler et al. because the only difference between the claims and that of the prior art lies in the article that is analyzed rather than the analysis process itself. The fact that applicant has recognized other advantages which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences between the claims and that taught in the art would otherwise be obvious. See Ex parte Obiaya, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Further, the recent Supreme Court decision in KSR Intl. Co. v. Teleflex Inc. rejected the rigid approach of applying a strict TSM test as the sole basis for obviousness and that the analysis for obviousness need not seek out precise teachings directed to the specific subject matter of a claim. Further the decision set forth that the analysis can take into account the inferences and creative steps that a person of ordinary skill in the art could employ and that a person of ordinary skill in the art is also a person of ordinary creativity, not an automaton. Further, the decision set forth that a combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.